

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

CRI/VBI/84/5/2019

BETWEEN

REX

v

CARLOS BAIN a.k.a “Fox”

Before: The Honourable Madam Justice Mrs. Jeanine Weech – Gomez

Appearances: Mr. Terry Archer and Mrs. Shaneka Carey, for the Prosecution
Ms. Marianne Cadet, for the Defendant

Hearing Dates: 25 April 2023

RULING - SENTENCING

WEECH-GOMEZ, J

Background Facts

1. The Convict, Carlos Bain was charged with Attempted Murder contrary to section 292 of the Penal Code, Chapter 84 and Possession of Firearm with Intent to Endanger Life contrary to section 33 of the Firearms Act, Chapter 213. He plead guilty in the Magistrate's Court to the charge of Possession of an unlicensed firearm and Possession of Ammunition stemming from the same events and served 3 years concerning the same and was remanded for a further 7 months awaiting Bail. On a plea agreement filed the 14th March,2023, concerning the charges of Attempted Murder and Possession of Firearm with Intent to Endanger Life, the Convict pleaded guilty to the charge of Possession of Firearm with Intent to Endanger Life and a Nolle Prosequi was presented which respect to the Attempted Murder. The sentence this court will pass today is as it relates to the guilty plea on the Offence of Possession of a Firearm with Intent to Endanger Life

Plea in Mitigation – Convict Submissions:

2. The Convict's Counsel has highlighted that the Convict upon arrest admitted to the possession of the firearm and pleaded guilty at the first available opportunity. The Convict is remorseful and saddened for any harm faced by the Virtual Complainant ("VC"). He has abided by all bail conditions and shows willingness and the capability to abide by the law and demonstrates that he is fit to be rehabilitated. This was seen particularly during his time at the Bahamas Department of Corrections ("BDOCs") where he successfully graduated from the Journey's prison fellowship program and obtained a certificate of completion in Basic Masonry.
3. Counsel continued that the circumstances surrounding this matter concerned the Convict being in a relationship with the ex-girlfriend of the VC, where emotions took control. He has since matured, learnt and understood the gravity of such decisions and has taken responsibility for the same. Counsel further submitted that the Convict's antecedent does not reflect any conviction of violence and that it is not in his character to behave in the same.
4. Counsel concluded her plea by stating that the Convict was gainfully employed and a contributing member of society prior to this incident and has provided the references of Mr. Christopher Williams who the Convict has been employed with since being released on Bail. Mr. Williams describes him as hardworking, honest , tidy, polite, punctual and an asset to his business. References also came from Attorney Kirkwood M. Seymour and Venerable

Keith Cartwright, Rector of the St. Agnes Church Grants Town who both describe Mr. Bain as someone who seeks to advance himself, focused, responsible, mannerly, punctual and goes above and beyond and does not present a danger to the public or someone who will reoffend. Counsel highlighted section 124 of the Penal Code, Chapter 84 which allows the Court to order probation and compensation instead of a custodial sentence, where the nature, circumstances, character of the offender amongst other considerations merit same.

5. Considering the age of the Convict at the time, the fact that he pleaded guilty at the outset, advanced himself while in custody, abided by Bail conditions, his character references, the VC statement that although he pointed the gun at him he shot the car instead, the Convict's remorse and time already served in relation to the same events, Counsel submits that the goal shouldn't be to punish him further but further rehabilitate and promote community growth. Counsel plead for mercy to be granted and put forth that a sentence of 1 year probation and compensation of \$4,000 to repair the vehicle would be appropriate in these circumstances.

The Crown's Submissions:

6. The Crown submitted to the Court that Possession of Firearm with Intent to Endanger Life contrary to section 33 of the Firearms Act, Chapter 213 as amended reflects a term of imprisonment of some ten to fifteen years. Counsel also stated that section 124 as stated by the Crown would not be applicable in this matter as this Convict has antecedents of drugs, stealing and damage, and in this matter he was also shooting at an occupied vehicle and being found with the gun and ammunition speaks to the character of the accused which is an aggravating factor. That he has spent 3 years in person there is still more time to be served and anything less than a custodial sentence would be too lenient.
7. The Crown continued by highlighting the cases of ***Deangelo L. Adderley SCCrApp No. 105 of 2020*** where the Appellant was convicted of Armed Robbery, 3 counts of Possession of Firearm with Intent to Endanger Life and 1 count of Possession of a Firearm with the intent to commit an indictable offence and sentenced to 7 years for each count of possession of a firearm with intent to endanger life to run concurrently upon plea agreement. On appeal the Court of Appeal affirmed the sentence. In ***Hancel Rolle v Regina SCCrApp & CAIS No. 287 of 2016*** the convict was sentenced to 15 years for possession of a firearm with intent to endanger life following the armed robbery of the Scotiabank branch with staff and customers in Stella Maris,

Long Island and shots fired causing damage to the building. The convict was sentenced to 25 years for armed robbery, 15 years for possession of a firearm with intent to endanger life and 5 years for causing damage. His appeal was dismissed and sentence affirmed. The final case was ***Damien Stuart v the Attorney General SCCrAPP No. 173 of 2010*** where the Appellant was convicted of Murder and Possession of Firearm with Intent to Endanger Life. The Appellant was sentenced to 30 years for Murder and 10 years for each count of Possession of Firearm with Intent to Endanger Life.

8. The Crown highlighted that the aggravating factors in this matter included that the Convict is not a person of good character in light of his antecedents, the use of a firearm, the seriousness of the offence and the prevalence of the firearm and firearm related offences. Mitigating Factors included that he plead guilty, was young when convicted and that he was remorseful. In light of the same, they say that the aggravating factors outweigh the mitigating ones and that amongst the sentencing principles outlined in the decision of ***Regina v Musgrove [2012] 1 BHS J No. 107***, Deterrence would be the most applicable to guide this case and that the same is typically used in firearm offences as was highlighted in the ***Commissioner of Police v Brian Botham*** paragraphs 31 and 32 as this offence is very serious one. All things considered, the Crown, in light of the circumstances of the case and the applicable principles and law state that the starting point is 10 years with a reduction for an early plea, a range of 7 years less time spent on remand would be most appropriate.
9. In reply to the Defense, the Crown highlighted that possession with intention to endanger life is more serious and but for the shots not hitting the VC, he would've been shot, making Deterrence most important and a non-custodial sentence would be inappropriate. It was also put forth that s. 124 is relative to a summary matter and is not appropriate in this instance but rather a look to section 125 (1) should be considered as this is an indictable offence.

The Defense's Reply

10. The Convict's Counsel provided briefly that at the Magistrate's Court level the Convict was able to plead guilty to Possession of a Firearm and Ammunition but was not allowed to plead to Assault with a deadly weapon as the Voluntary Bill of Indictment (VBI) had not yet been served on that charge. Once coming up to the Supreme Court level the charge was increased to Possession with Intent to endanger life. The Convict was then served in June 2019 but had he had the opportunity to plea for Assault, he would have and that is important for the Court to consider. Counsel continued that the submissions by the Crown were prejudicial to Attempted Murder and that the evidence does not put the VC in the car. Counsel also raised that in the case

of Stephon Moss though a rape matter but nonetheless very serious, the Court had discretion under section 124. Counsel concluded her response by distinguishing the cases of the Crown namely that **Adderley (supra)** was found guilty by a jury and not a plea arrangement and that the armed robbery was a planned act whereas in this matter the Convict let his emotions get the best of him. Rolle (supra) was also a conviction by jury and not a plea and was also a planned robbery and that the Court looked at each individual involved separately and utilized its discretion in each of the circumstances as should be done with this Convict. Finally the **Stuart (supra)** case was one of violence and the VC was harmed which is not applicable to this case as a reference.

The Law

Possession of Firearm with Intent to Endanger Life contrary to section 33 of the Firearms Act, Chapter 213.

Firearms (Amendment) Act, 2014.

20. Amendment of section 33 of the principal Act.

Section 33 of the principal Act is amended by the deletion of the words "a felony, and on conviction on information shall be liable to imprisonment for a term in the range of fourteen years to twenty years." and the substitution therefor of the words "an offence, and shall be liable -

(a) on conviction on information to a term of imprisonment in the range of ten years to fifteen years;

(b) on summary conviction to a term of imprisonment in the range of two years to ten years".

In **R v Musgrove (BS 2012 SC 110)** it was reiterated that,

*"Punishment is always a matter for the court's discretion having regard to the particular circumstances of the case. When sentencing, the court must have regard to the four classical principles of sentencing which could be summed up in four words "**retribution, deterrence, prevention and rehabilitation:**" see. Lawton, L.J. in R.v.Sargeant [60 Cr. App. R. 74]..... [and] re-stated and adopted in Desmond Baptiste v. The Queen [Criminal App. No. 8 of 2003 (Saint Vincent & The Grenadines)]".*

Court's Review & Sentence

11. After hearing the submissions of Counsel, I will state at the outset that it was most unfortunate that the Convict Bain was sentenced for Possession of a Firearm and Ammunition relative to the same matter and has already served that time and is now being brought back under the same facts for the more

serious charge. It would have been more prudent to prepare the matter in its entirety and adjudicate it as a whole nonetheless we are here as a part of the plea agreement today.

12. This Court has taken into consideration the aggravating and mitigating factors with respect to this matter and applaud the Convict for doing what he can to better himself both while incarcerated and now on Bail. However, possession with a firearm with intent to endanger life is a serious offence and because the shots fired did not hit the intended party that does not negate that others though not intended could have also been impacted and this is also worsened by the criminal crime present to date.

13. This Court stands with the principles outlined in *Botham (supra)* which highlights that in **Galen Forbes v The Commissioner of Police MCCRApp & CAIS No. 10 of 2013** and though a Magistrate Court Appeal to the Court of Appeal agrees that ,

“Notwithstanding that youth and previous good character may have in previous cases resulted in reduction, nevertheless, having regard to the prevalence of guns, the increasing and alarming incidences of murder, manslaughter and assault with such weapons in the Bahamas today, we think deterrence should be the objective of this court in this case. We feel it is essential that we send a strong message to the appellant and to others who would offend that possession of firearms is a serious offence and will not be tolerated”.

14. Understanding this and in review of the above, this Court cannot remove its mind from the fact that a firearm used and that is not to be taken lightly and for this reason some level of imprisonment must be invoked with the hopes that it will deter the Convict from engaging in such activities and thinking constructively before acting, this together with not possessing an illegal firearm upon his release but continuing to be a positive contributing member of society. This Court hereby sentence **CARLOS BAIN a.k.a FOX** to **FIVE YEARS** imprisonment taking into account the time already served that being **THREE YEARS** sentenced by the Magistrates court and the **SEVEN MONTHS** on remand with respect to the same matter for a total of **ONE YEAR** and **FIVE MONTHS** to be served in custody from the date of his conviction being the 14th March, 2023 and therefore there will be no payment as to damage for the vehicle.

The Hon. Madam Justice Jeanine Weech – Gomez

Dated this 21st day of June, 2023.